

Article 42.

Mandatory or Voluntary Risk Sharing Plans.

§ 58-42-1. Establishment of plans.

(a) If the Commissioner finds, after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, he may either:

- (1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or
- (2) Call upon insurers to prepare plans for his approval.

(b) Consistent with G.S. 58-42-5(a)(2), the Commissioner shall at least annually reevaluate a plan promulgated pursuant to this section and shall terminate the plan upon determining that the insurance coverage is readily available in the voluntary market or that the public interest no longer requires the operation of the plan. (1986, Ex. Sess., c. 7, s. 1; 1999-114, ss. 1, 2.)

§ 58-42-5. Purposes, contents, and operation of risk sharing plans.

(a) Each plan promulgated or prepared pursuant to G.S. 58-42-1 shall:

- (1) Give consideration to:
 - a. The need for adequate and readily accessible coverage;
 - b. Optional methods of improving the market affected;
 - c. The inherent limitations of the insurance mechanism;
 - d. The need for reasonable underwriting standards; and
 - e. The requirement of reasonable loss prevention measures;
- (2) Establish procedures that will create minimum interference with the voluntary market;
- (3) Distribute the obligations imposed by the plan, and any profits or losses experienced by the plan, equitably and efficiently among the participating insurers; and
- (4) Establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The filing and processing of a grievance pursuant to this subdivision does not stay the requirement for participation in a plan mandated by G.S. 58-42-10.

(b) Each plan may, on behalf of its participants:

- (1) Issue policies of insurance to eligible applicants;
- (2) Underwrite, adjust, and pay losses on insurance issued by the plan;
- (3) Appoint a service company or companies to perform the functions enumerated in this subsection; and
- (4) Obtain reinsurance for any part or all of its risks. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-10. Persons required to participate.

(a) Each plan shall require participation:

- (1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;
 - (2) By all agents licensed to represent those insurers for that kind of insurance; and
 - (3) By every statistical organization that makes rates for that kind of insurance.
- (b) The Commissioner shall exclude from each plan any person if participation would impair the solvency of that person. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1; 2005-210, s. 21.)

§ 58-42-15. Voluntary participation.

Each plan may provide for participation by:

- (1) Insurers that are not required to participate by G.S. 58-42-10;
- (2) Eligible surplus lines insurers as defined in G.S. 58-21-10(3); or
- (3) Reinsurers approved by the Commissioner. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-20. Classification and rates.

Each plan shall provide for:

- (1) The method of classifying risks;
- (2) The making and filing of rates that are not excessive, inadequate, or unfairly discriminatory and that are calculated on an actuarially sound basis and policy forms applicable to the various risks insured by the plan;
- (3) The adjusting and processing of claims;
- (4) The commission rates to be paid to agents or brokers for coverages written by the plan; and
- (5) Any other insurance or investment functions that are necessary for the purpose of providing adequate and readily accessible coverage. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-25. Basis for participation.

Each plan shall specify the basis for participation by insurers, agents, statistical organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1; 2005-210, s. 22.)

§ 58-42-30. Duty to provide information.

Every participating insurer and agent shall provide to any person seeking the insurance available in each plan, information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan, whenever the insurance is not readily available in the voluntary market. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-35. Provision of marketing facilities.

If the Commissioner finds that the lack of participating insurers or agents in a geographic area makes the functioning of a plan difficult, he may order that the plan appoint agents on such terms

as he designates or that the plan take other appropriate steps to guarantee that service is available. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-40. Voluntary risk sharing plans.

Insurers doing business within this State or reinsurers approved by the Commissioner may prepare voluntary plans that will provide any specific amount or kind of insurance or component thereof for all or any part of this State in which that insurance is not readily available in the voluntary market and in which the public interest requires the availability of the coverage. These plans shall be submitted to the Commissioner and, if approved by him, may be put into operation. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-45. Article subject to Administrative Procedure Act; legislative oversight of plans.

(a) The provisions of Chapter 150B of the General Statutes shall apply to this Article.

(b) At the same time the Commissioner issues a notice of hearing under G.S. 150B-38, the Commissioner shall provide copies of the notice to the Joint Regulatory Reform Committee and to the Joint Legislative Commission on Governmental Operations. The Commissioner shall provide the Committee and Commission with copies of any plan promulgated by or approved by the Commissioner under G.S. 58-42-1(1) or (2). (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1; 2000-140, s. 15; 2011-291, s. 2.5.)

§ 58-42-50. Immunity of Commissioner and plan participants.

There shall be no liability on the part of, and no cause of action shall arise against the Commissioner, his representatives, or any plan, its participants, or its employee for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this Article. (1986, Ex. Sess., c. 7, s. 1; 1999-114, s. 1.)

§ 58-42-55: Repealed by Session Laws 2001-122, s. 1.